IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 4990 of 2007(R)

OS.1267/2006 of PRL.MUNSIFF COURT. , ERNAKULAM
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PETITIONER:
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1. VISHAYA V. PRABHU, W/O.D.V.PRABHU,
PRABHU NIVAS, KALOOR, KATHRIKADAVU ROAD,
KALOOR P.O., KOCHI-17.

2. V. SUJATHA PRABHU, D/O.D.V. PRABHU,
`SURYA', THOPPIL HOUSE, MULLACKAL WARD,
ALAPPUZHA-11.

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENT:

SUNIL V. PRABHU, AGED 45 YEARS,
S/O.D.VASUDEVA PRABHU, F-14, J.M.GARDENS,
PALLIKARA TEMPLE ROAD,
VADUTHALA P.O., COCHIN-23.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)
SRI.GINESH.P.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF ORDER DTD.11.12.06 IN IA 11412/06 IN 5-7 OS 1267/06 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, ERNAKULAM.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 4990 OF 2007

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Dated this the 19th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order passed in I.A.11412/06 in O.S.1267/06 of the Principal Munsiff Court, Ernakulam. The suit is one for declaration that the document is void and for a consequential injunction. The subject matter of the suit is 45 cents of property situated in Kaloor in Ernakulam city. The two-fold contentions are, that the document sought to be challenged is only a voidable one and therefore in order to avoid it, it must be set aside and therefore Court fee has to be paid u/s 40 of the Court Fees Act. So far as this point is concerned, the plaintiff has not chosen to incorporate a prayer to set aside the document and he has taken the risk of praying for a declaration that the document is to be declared void. So, when the prayer in the suit itself is only for a declaration to get the document void, one cannot instruct him to incorporate a prayer for

setting aside the suit and if ultimately the court finds that one cannot pass a declaration by declaring the document as void it is for the plaintiff to suffer the consequences. So, that need not detain us so long.

The next point to be considered is regarding the valuation of the property. If it is an agricultural land, then Section 7(2) of the Court Fees Act will apply and 10 times gross profit minus land cess will be the valuation for determining the Court fee jurisdiction. But, if it is not an agricultural land, as per the amended Court Fees Act, S.7(3)(a) will come into being and the mode of valuation has to be done in that fashion. So the question to be considered is whether it is an agricultural land or non-agricultural land or coming under any other provisions u/s 7 of the Court Fees Act, it requires an enquiry by the court. If the court feels that materials are necessary to decide that question it can invoke its power u/s 19 by issuance of a Commission and after collecting details from the parties and decide the matter in

accordance with law. Therefore, the order under challenge is set aside and the matter is remitted back to the trial court for fresh consideration in the light of the observations made above. Since it is a fact which affects the very jurisdiction of the Court it has to be considered as a preliminary issue.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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